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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,723	03/29/2004	Ramachandra Shastry	2664-000015/US	1437

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EXAMINER

ROBERTS, LEZAH

ART UNIT PAPER NUMBER

1614

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,723	<b>Applicant(s)</b> SHASTRY ET AL.	
	<b>Examiner</b> Lezah W. Roberts	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 20-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>30 Jul 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

Applicant's election with traverse of Group I, drawn to a method, in the reply filed on March 7, 2006 is acknowledged. The traversal is on the ground(s) that the Examiner has not shown that the process of using as claimed can be practiced with another materially different process. This is not found persuasive because the wipe may be used alone to clean the teeth as oppose to being a preconditioning wipe (see reference Rathbum (US 2,439,056), where a similar wipe was used to clean the teeth).

The requirement is still deemed proper and is therefore made FINAL.

### *Claims*

#### **Claim Rejections - 35 USC § 103 - Obviousness**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1) Claims 1-16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 6,958,144) in view of Rathbum (US 2,439,056).

Montgomery teaches compositions and methods of whitening teeth using a two step method. The method comprises applying a buffering composition to the teeth making the teeth surface pH range from 7 to 10. This step is followed by applying a peroxide tooth composition to the teeth. The buffering composition may comprise potassium phosphate, sodium hydroxide, potassium hydroxide, ammonium hydroxide, sodium carbonate, ammonium carbonate and potassium carbonate. The peroxide composition was a viscous gel, which encompasses claim 19. The peroxides that may be used in the peroxide composition includes hydrogen peroxide, which encompasses claim 15-16. The reference differs from the instant claims insofar as it does not disclose any particular methods of applying the buffering composition to the teeth and does not disclose using sodium bicarbonate as a base.

Rathbum teaches a tooth cleaning applicator made out of cotton (col. 2, lines 15-20), which is an absorbent material thereby encompassing the instant claims. The material is a strip and therefore may be considered a towelette, which encompasses claims 4 and 11. The material is inexpensive and may be applied to the finger (col. 1, lines 35-40). The strip will absorb moisture, deliver the oral care substance to the teeth as well as retain foreign objects (col. 2, lines 25-31). The composition on the strip

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comprises sodium bicarbonate and flavoring (table in col. 2), which encompasses claims 5-9 and 12-14. The reference differs from the instant claims insofar as it does not teach applying a peroxide composition after applying the bicarbonate composition.

It would have been obvious to one of ordinary skill in the art to have applied the bicarbonate composition with the strip in the method of the primary reference motivated by the desire to use an inexpensive applicator that is not just able to deliver the composition but is also able to remove foreign objects before the whitening composition is applied, as disclosed by the secondary reference.

2) Claims 1-4, 6-11, 13-16 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 6,958,144) in view of Spector (US 4,665,901).

The primary reference is discussed above. The reference differs from the instant claims insofar as it does not teach applying the alkaline composition with an absorbent fabric and it does not teach using a liquid peroxide composition although it disclosed peroxide compositions come in the form of a gel, paste or liquid (col. 1, lines 50-60).

Spector teaches an apparatus that is placed on the finger to deliver a sodium bicarbonate containing composition and a hydrogen peroxide liquid for the treatment of diseases of the oral cavity. The apparatus keeps the two components separate before use. The bicarbonate powder is in a sponge-like material, an absorbable material as recited in the instant claims. The peroxide is in an envelop behind the sponge (see figures). When pressure is applied the peroxide containing envelop ruptures mixing the two components while at the same time delivering them to the teeth. Although it is not

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stated in the reference, it may be concluded the bicarbonate may touch the surface of the teeth first if pressure is not high enough to rupture the peroxide and the sponge would be able to absorb saliva thereby reaching the teeth. An advantage of this method is the gums are stimulated therefore enhancing the effect of the treatment. The object is inexpensive, portable and disposable (col. 2, lines 47-54). The reference differs from the instant claims insofar as it does not disclose the bicarbonate being delivered to the teeth before the hydrogen peroxide composition.

It would have been obvious to one of ordinary skill in the art to have used the apparatus to apply the compositions in the method of the primary reference motivated by the desire to stimulate the gums and provide an object that is inexpensive, portable and disposable, as taught by the secondary reference.

3) Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (6,958,144) in view of Rathbum (US 2,439,056) as applied to claims 1-16 and 19 above, and further in view of Sagel et al. (US 5,891,453).

The combined references are discussed above. The references differ from the instant claim insofar as it does not disclose providing the whitening composition by way of a strip.

Sagel et al. teach a delivery system for whitening compositions using a strip of material. The strip comprises a whitening agent and an adhesive so when the strip is moistened by saliva; the strip adheres to the teeth. The delivery system is inexpensive and comprises a minimal volume of tooth whitening substance, which includes

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hydrogen peroxide. It is comfortable, does not interfere with the wearer's speech and provides rapid delivery of the active substance (col. 2, lines 54-67). The reference differs from the instant claim insofar as it does not disclose sodium bicarbonate being delivered to the teeth before the hydrogen peroxide composition or sodium bicarbonate being on an absorbent fabric.

It would have been obvious to one of ordinary skill in the art to have used a strip to deliver the peroxide composition in the method and sodium bicarbonate composition of the combined references motivated by the desire to provide a vehicle for the whitening compositions that was inexpensive, comfortable, does not interfere with the wearer's speech and provides rapid delivery of the active substance as taught by the secondary reference.

Claims 1-19 are rejected.

Claims 20-34 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

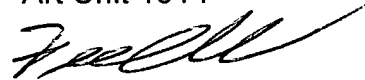
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lezah Roberts  
Patent Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read 'Lezah Roberts', followed by a long horizontal flourish.

Frederick Krass  
Primary Examiner  
Art Unit 1614

A handwritten signature in black ink, appearing to read 'Frederick Krass', followed by a long horizontal flourish.